

1 SUE ELLEN WOOLDRIDGE
Assistant Attorney General
2 Environment and Natural Resources Division
U.S. Department of Justice

3 LORI JONAS (Bar # 158268)
4 Senior Attorney
Environmental Enforcement Section
5 Environment and Natural Resources Division
U.S. Department of Justice
6 P.O. Box 7611
Washington, D.C. 20044
7 (202) 514-4080

8 PETER KEISLER
Assistant Attorney General

9 KEVIN V. RYAN

United States Attorney

10 R. MICHAEL UNDERHILL (State Bar No. 104986)

Attorney in Charge, West Coast Office

11 Torts Branch, Civil Division

U.S. Department of Justice

12 7th Floor Federal Bldg., Room 7-5395

P.O. Box 36028, 450 Golden Gate Avenue

13 San Francisco, California 94102-3463

Telephone: (415) 436-6648

14 Fax: (415) 436-6632

mike.underhill@usdoj.gov

15
16 Attorneys for Plaintiff United States

17
18 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
19 SAN JOSE DIVISION

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 ALL OCEANS TRANSPORTATION,
INC., ITALIA MARITTIMA S.P.A
24 (FORMERLY LLOYD TRIESTINO
DI NAVIGAZIONE),

25 YANG MING MARINE TRANSPORT
CORPORATION, in personam,
26 M/V YM PROSPERITY, in rem,

27 Defendants.
28

CASE NO.

IN ADMIRALTY

VERIFIED COMPLAINT

VERIFIED COMPLAINT

1 The United States of America, on behalf of the Secretary of United States Department of
2 Commerce, hereby files this Complaint against All Oceans Transportation, Inc. ("All Oceans");
3 Italia Marittima S.p.A. (formerly Lloyd Triestino Di Navigazione) ("Italia Marittima"), and
4 Yang Ming Marine Transport Corporation ("Yang Ming"), in personam, and against the M/V
5 YM PROSPERITY (previously known as the M/V MED TAIPEI), in rem, and alleges as
6 follows:

7 NATURE OF THE ACTION

8 1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears,
9 and within Rule 9(h) of the Federal Rules of Civil Procedure, and, further, is an action
10 brought under the National Marine Sanctuaries Act ("NMSA" or the "Act"), 16 U.S.C. §§
11 1431, et seq., for damages and response costs against All Oceans, Italia Marittima and
12 Yang Ming, in personam, and the M/V YM PROSPERITY, in rem.

13 JURISDICTION AND VENUE

14 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1333, 1367(a),
15 and 1345, and 16 U.S.C. § 1443.
16 3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because it is the judicial
17 district in which the violations giving rise to this action occurred.

18 DEFENDANTS

19 4. All Oceans is a corporation incorporatted in Liberia and is a "person" under the Act. All
20 Oceans has its principal place of business in Monrovia, Liberia. All Oceans is a wholly
21 owned subsidiary of Yang Ming.
22 5. Yang Ming is a corporation organized under the laws of the Republic of China and is a
23 "person" under the Act. Yang Ming has its principal place of business in Taiwan,
24 Republic of China.
25 6. Italia Marittima is a Joint Stock Company with a Sole Member and is a "person" under
26 the Act. Italia Marittima has its principal place of business in Trieste, Italy.
27
28

1 7. At all times hereinafter mentioned, the defendant vessel M/V MED TAIPEI (now known
2 as the M/V YM PROSPERITY) (Lloyd's Registry No. 8501440), her engines, boats,
3 bunkers, machinery, containers, and all appurtenances, etc. (hereinafter referred to as the
4 "Vessel"), was a container vessel flagged in Kaohsiung, China, and is now, or during the
5 pendency of this action will be, within the navigable waters of this District and within the
6 jurisdiction of this Honorable Court.

7 8. At all times hereinafter mentioned, Yang Ming was the operator of the Vessel.

8 9. At all times hereinafter mentioned, All Oceans was the owner of the Vessel.

9 10. At all times hereinafter mentioned, Italia Marittima owned and/or leased the containers at
10 issue in this matter.

11 THE NATIONAL MARINE SANCTUARIES ACT

12 11. Congress enacted the National Marine Sanctuaries Act ("NMSA") in order to recognize
13 and protect certain areas of the marine environment that possess conservation,
14 recreational, ecological, historical, scientific, educational, cultural, archeological, or
15 esthetic qualities. 16 U.S.C. § 1431(a)(1) & (2).

16 12. On September 18, 1992, the National Oceanic & Atmospheric Administration ("NOAA")
17 established the Monterey Bay National Marine Sanctuary ("MBNMS") citing its "highly
18 productive ecosystem;" "wide variety of marine habitat;" "highly diverse floral and
19 fauna;" outstanding concentration of pinnipeds, whales, otters, and seabirds; and its "high
20 water quality," among other attributes, as justification for its designation. 57 Fed. Reg.
21 43310; 16 U.S.C. §1433.

22 13. The President designated the Secretary of the Department of Commerce ("Department")
23 as the trustee of natural resources managed or controlled by the Department and that are
24 found in or under waters navigable by deep draft vessels. 40 C.F.R. § 300.600(b)(1).

25 14. Pursuant to Department Organization Order 25-5, the Secretary of the Department of
26 Commerce delegated authority to administer the National Marine Sanctuary Program,
27 including the MBNMS to the Under Secretary for Oceans and Atmosphere in NOAA.
28

- 1 15. Under the NMSA, 16 U.S.C. § 1431, et seq., any person who destroys, causes the loss of,
2 or injures any sanctuary resource is liable to the United States for response costs and
3 damages resulting from such destruction, loss, or injury. Id. at §1443(a)(1).
- 4 16. The NMSA defines "sanctuary resource" as "any living or nonliving resource of a
5 national marine sanctuary that contributes to the conservation, recreational, ecological,
6 historical, educational, cultural, archaeological, scientific or aesthetic value of the
7 sanctuary." Id. at § 1432(8).
- 8 17. The NMSA defines "response costs" as "the costs of actions taken or authorized by the
9 Secretary to minimize destruction or loss of, or injury to, sanctuary resources, or to
10 minimize the imminent risks of such destruction, loss, or injury, including costs related to
11 seizure, forfeiture, storage, or disposal arising from liability under Section 1443 of this
12 title." Id. at § 1432(7).
- 13 18. The NMSA defines "damages" as, inter alia: a) compensation for (i)(I) the cost of
14 replacing, restoring, or acquiring the equivalent of a sanctuary resource, and; (II) the
15 value of the lost use of a sanctuary resource pending its restoration or replacement or
16 acquisition of an equivalent sanctuary resource; or (ii) the value of a sanctuary resource if
17 the sanctuary resource cannot be restored or replaced or if the equivalent of such resource
18 cannot be acquired; b) the cost of damage assessments; (c) the reasonable cost of
19 monitoring appropriate to the injured, restored, or replaced resources; and (d) the cost of
20 enforcement actions undertaken by the Secretary in response to the destruction or loss of,
21 or injury to, a sanctuary resource. Id. at § 1432(6).
- 22 19. Pursuant to 16 U.S.C. § 1436, 1437(d), the Secretary of Commerce may assess civil
23 penalties of up to \$130,000 per day of violation for each violation of the NMSA,
24 including its implementing regulations.
- 25 20. The NMSA empowers the Secretary to request that the Attorney General commence a
26 civil action for the recovery of response costs and damages from a party who has violated
27 the Act. Id. at § 1443(c).
- 28

GENERAL ALLEGATIONS

21. On or about February 25, 2004, the M/V MED TAIPEI completed container loading operations in the port of Oakland, California, and departed en route to the port of Los Angeles.
22. On or about February 26, 2004, the Vessel, while traveling through the MBNMS, experienced a loss of approximately fifteen loaded shipping containers loaded and/or stacked aboard the Vessel in the port of Oakland ("Loss of Containers"). These containers, containing a variety of products, including car tires, sofas and wheelchair accessories, are located on the ocean floor at various depths presently believed to be in excess of 2000 feet.
23. Upon arrival in the port of Los Angeles, it was found, inter alia, that several locking-positioning assemblies, which are intended to secure containers, were either missing or damaged and that some welds were improper and, further, that the container load had not been stacked aboard the Vessel in a safe, secure, and proper manner.
24. To date, only one of the containers has been located. This container was found in the MBNMS at a depth in excess of 2000 feet and approximately 14 miles offshore the California coast.
25. It is believed that the containers landed in deepwater habitats with a diverse biota. Monterey Bay is one of the most biologically diverse bodies of water in the world. Injuries to Sanctuary resources likely include physical crushing or smothering of benthic organisms and their habitats, chemical changes in benthic sediments as containers deteriorate, and entrapment of mobile organisms by container contents, such as cyclone fencing. To the extent that the containers deteriorate and spill their contents over the Sanctuary floor, the injury imprint will increase.
26. NOAA has incurred response costs in connection with the Loss of Containers.

CAUSE OF ACTION

27. Plaintiff, United States of America, refers to and incorporates by reference as though fully

1 set forth herein each and every foregoing paragraph of this Complaint.

2 28. The United States incurred "response costs" within the meaning of Section 1432(7) of the
3 NMSA, as a result of the Loss of Containers.

4 29. The United States incurred "damages" within the meaning of Section 1432(6) of the
5 NMSA, as a result of the Loss of Containers.

6 30. All Oceans, Italia Marittima, Yang Ming, in personam, and the Vessel, in rem, are jointly
7 and severally liable to the United States for all past and future "response costs" and
8 "damages" incurred as a result of the Loss of Containers. 16 U.S.C. §1443(a)(1) and
9 (a)(2).

10 PRAYER FOR RELIEF

11 WHEREFORE, the Plaintiffs, the United States of America respectfully requests
12 that:

13 1. That actual notice of the commencement of this suit in manner approved by the court
14 be given to the master or other ranking officer of the Vessel, as may be applicable;

15 2. That, pursuant to Rule C(3) of the Supplemental Admiralty Rules of the Fed. R. Civ.
16 P., the Court enter an order authorizing a warrant for the arrest of the Vessel, her engines, boats,
17 bunkers, machinery, containers, and all appurtenances, etc.;

18 3. That a warrant issue for the arrest of said Vessel, her engines, boats, bunkers,
19 machinery, containers, and all appurtenances, etc.;

20 4. That judgment of condemnation and sale be entered against said Vessel, her engines,
21 boats, bunkers, machinery, containers, and all appurtenances, etc.;

22 5. That plaintiff be declared the holder of a maritime lien on said Vessel;

23 6. That the Court issue judgment against Italia Marittima, All Oceans, Yang Ming, and
24 the Vessel for all past and future "response costs" and "damages" incurred by the United States
25 relating to the Loss of Containers;

26 7. That the Vessel be sold and the proceeds from the sale be applied to the satisfaction of
27 the United States' judgment and lien against said Vessel;

- 1 8. That plaintiff be awarded its costs and disbursements in this action; and
2 9. That the Court grant such other relief as the Court deems just and appropriate.

3 Respectfully submitted,

4
5
6 SUE ELLEN WOOLDRIDGE /
Assistant Attorney General
7 Environment and Natural Resources
Division
8 United States Department of Justice
9

10 LORI JONAS, Senior Attorney
11 Environmental Enforcement Section
Environment and Natural Resources
12 Division
United States Department of Justice
13 P.O. Box 7611
Washington, D.C. 20044
14 (202) 514-4080

15 PETER KEISLER
Assistant Attorney General
16 KEVIN V. RYAN
United States Attorney
17

18
19 R. MICHAEL UNDERHILL
(State Bar No. 104986)
20 Attorney in Charge, West Coast Office
Torts Branch, Civil Division
21 U.S. Department of Justice
7th Floor Federal Bldg., Room 7-5395
22 P.O. Box 36028, 450 Golden Gate Avenue
San Francisco, California 94102-3463
23 Telephone: (415) 436-6648
Fax: (415) 436-6632
24 mike.underhill@usdoj.gov

25 Of Counsel:
SHARON K. SHUTLER
26 NOAA Office of General Counsel,
Natural Resources
27 1315 East-West Highway
Silver Spring, MD 20910-3282
28

- 1 8. That plaintiff be awarded its costs and disbursements in this action; and
2 9. That the Court grant such other relief as the Court deems just and appropriate.

3 Respectfully submitted,

4
5
6 SUE ELLEN WOOLDRIDGE
7 Assistant Attorney General
8 Environment and Natural Resources
9 Division
10 United States Department of Justice

11 LORI JONAS, Senior Attorney
12 Environmental Enforcement Section
13 Environment and Natural Resources
14 Division
15 United States Department of Justice
16 P.O. Box 7611
17 Washington, D.C. 20044
18 (202) 514-4080

19 PETER KEISLER
20 Assistant Attorney General
21 KEVIN V. RYAN
22 United States Attorney

23 R. MICHAEL UNDERHILL
24 (State Bar No. 104986)
25 Attorney in Charge, West Coast Office
26 Torts Branch, Civil Division
27 U.S. Department of Justice
28 7th Floor Federal Bldg., Room 7-5395
P.O. Box 36028, 450 Golden Gate Avenue
San Francisco, California 94102-3463
Telephone: (415) 436-6648
Fax: (415) 436-6632
mike.underhill@usdoj.gov

25 Of Counsel:
26 SHARON K. SHUTLER
27 NOAA Office of General Counsel,
28 Natural Resources
1315 East-West Highway
Silver Spring, MD 20910-3282

VERIFICATION

R. MICHAEL UNDERHILL says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED: July 6, 2006.

R. MICHAEL UNDERHILL